

## REMARKS

Claims 1 – 20 are pending in the application.

The energy attenuation apparatus of the present invention comprises liquid-conveying means that includes three chambers disposed in series, wherein one of the chambers contains no tubes.

The Examiner has first rejected claims 1 – 8 and 10 – 18 under the judicially created doctrine of obviousness-type double patenting over claims 6 – 16 of US Patent Number 6,338,363. However, this rejection is not understood in as much as the present application is a continuation-in-part application of the application that matured into the subject patent. Thus, the term of any patent issuing from the present application will, at least for the subject claims, be the same as that of the referenced patent. Nonetheless, if desired by the Examiner a Terminal Disclaimer can be filed.

The Examiner has also rejected claims 1 – 3, 6, 7, 13 – 15 and 20 as being anticipated by Van Ruiten ('981). However, it is respectfully submitted that Van Ruiten in no way teaches or even suggests the three chamber configuration required by the claims of the instant application. In particular, it is respectfully submitted that the conduit 61 of Van Ruiten is comparable to Applicants' conduit T (see, for example, Figs. 1, 10 and 17 of the instant application), which is not contemplated as being a chamber. Rather, the conduit 61 of Van Ruiten is similar to the inlet conduit 29 and outlet conduit 33 of the embodiment of Figs. 1 and 2 thereof, and is merely in place of the restrictor 24 of that embodiment that is disposed between the two chambers. It is respectfully submitted that Van Ruiten clearly does not consider the conduit 61 a chamber, as

evidenced, for example, by the language in column 5, lines 45 – 54, which conclude with the language "the tube 61 itself may function similar to a restriction means by dividing the hose construction 20' into the separate chambers 26' and 27' "; it is clear that Van Ruiten contemplates only the provision of the two chambers 26' and 27'. The Examiner's attention is also directed to the "interconnecting" language used in conjunction with the conduit 61 in column 5, line 66. Further support for Applicants' contention that Van Ruiten contemplates only two chambers, and does not contemplate the conduit 61 in any way as a chamber, can be found in column 6, lines 43 – 51. The Examiner's attention is also directed to Figs. 17 and 18 of the drawings of the instant application. In these figures, it is submitted that the tubing T between the chambers is comparable to the conduit 61 of Van Ruiten.

Applicants would also like to point out that the tuning cables of Van Ruiten are not tubes as contemplated by the present invention, but rather are metallic tuning cables that are made of wound metal strips (see Figs. 2A, 2B, 4 and 5 of Van Ruiten). When liquid under pressure is conveyed through the tuning cables of Van Ruiten, the wound metal strips spread apart to allow liquid to escape at multiple locations between the strips. Thus, the tuning cables of Van Ruiten operate entirely differently than the tubes of the present invention, and are not comparable therewith.

Although Applicants respectfully submit that the language of claim 1 of the instant application clearly distinguishes its three chamber configuration from the two chambers of Van Ruiten, should the Examiner believe that further language is necessary to make more clear such three chamber definition, and hence to make the

distinction over Van Ruiten more clear, the undersigned would very much appreciate any suggestions as well as a telephone interview with the Examiner to discuss appropriate amendments to the claims.

The Examiner has also rejected claims 19 and 20 as being anticipated by Cooper on the basis that the chambers 22 and 22' of Cooper contain springs, "and therefore are two chambers that do not contain a tube". Applicants respectfully submit that this position is not tenable. In particular, Applicants have clearly defined their language that one of the chambers contains no tubes as meaning empty (see, for example, page 3, line 20, and page 14, lines 3 – 6, of the specification of the instant application). Thus, it is respectfully submitted that Cooper in no way teaches or suggests chambers that contain no tubes, i.e. empty chambers, as clearly defined in the instant application.

The Examiner has furthermore rejected claims 1, 3, 6 – 10 and 16 as being obvious over Cooper. However, Applicants respectfully submit that it is not obvious to substitute a tube for a spring since the two entirely different structures also operate entirely differently. It is furthermore respectfully submitted that this significant difference is clearly evidenced in Cooper by the presence of tubes in one of the chambers of some of the embodiments thereof. It is furthermore respectfully submitted that the Examiner has taken an entirely inconsistent position with regard to the springs. In particular, on page 3 of the Office Action, paragraph 4, the Examiner states that where springs are present, namely in the chambers 22 and 22', such chambers "are seen to not contain a tube". It is therefore respectfully submitted that the Examiner also does not consider a

tube and a spring interchangeable, so that it can in no way be deemed obvious to make such a substitution. Furthermore, as discussed above, Cooper in no way suggests having an empty chamber, which, as indicated above, is the chamber defined in claim 1 that contains no tubes.

Finally, the Examiner has also rejected claims 2, 4, 5, 11, 12, 17 and 18 as being obvious over the combination of Cooper and Van Ruiten. Both of these references have been discussed at length above. It is therefore respectfully submitted that in view of such discussion, a combination of these references still could not provide the energy attenuation apparatus as defined in claim 1 of the instant application, for example due to the fact that neither reference provides for an empty chamber. It is furthermore respectfully submitted that it would even be improper to combine these references pursuant to the last section of MPEP section 2143.01, where it is stated that if the proposed modification or combination of the prior art would change the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. Thus, since a change in the basic principle under which Cooper was designed to operate, namely by the use of at least one spring, it is respectfully submitted that a combination of Cooper and Van Ruiten is improper.

In view of the foregoing discussion, Applicants respectfully request reconsideration of the allowability of the claims of the instant application. In addition, should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call from the Examiner in order to be able to discuss

any outstanding issues and expedite placement of the application into condition for allowance.

Respectfully Submitted,

*Robert W. Becker*

Robert W. Becker, Reg. No. 26,255  
for applicant(s)

ROBERT W. BECKER & ASSOCIATES  
707 Highway 66 East, Suite B  
Tijeras, NM 87059

Telephone: (505) 286-3511  
Facsimile: (505) 286-3524

RWB:mac